EX PARTE OR LATE FILED

RECEIVED

NOV 1 8 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

LAW OFFICES
PIERSON & TUTTLE
1200 NINETEENTH STREET, N.W.
SUITE 607
WASHINGTON, D.C. 20036

(202) 466-3044 / FAX: (202) 466-3055

DOCKET FILE COPY ORIGINAL

November 16, 1994

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C.

Re: **Ex Parte Contact in Price Cap Performance Review for Local Exchange Carriers -- CC Docket No 94-1**

Dear Mr. Caton:

On November 17, 1994, Heather Burnett Gold, President of ALTS, Janis Stahlhut, Vice President, Time Warner Communications, W. Theodore Pierson, Jr., of Pierson & Tuttle, and myself met with James W. Olson, Chief, Competition Division of the Office of the General Counsel, and members of his staff to discuss USTA's proposed revision of the Commission's price cap plan for LECs. At the meeting the enclosed materials were distributed.

Two copies of this letter are being submitted for inclusion in the file.

Sincerely,

Richard J. Metzger
Attorney for ALTS

cc: H. Gold
J. Olson

No. of Copies rec'd 0+2
List ABCDE

RECEIVED
NOV 1 8 1994
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

PRICE CAP PERFORMANCE REVIEW FOR LOCAL EXCHANGE CARRIERS -- CC DOCKET NO 94-1

1) Immense Barriers to Competition Remain in Place at Both the Federal and State Levels

- While a few states have made progress in granting local authority to competitive carriers, almost all jurisdictions still prohibit head-to-head competition in major markets, including access to universal service support.

- Only a few areas have even interim local number portability plans available, and competitive carriers will not be able to compete robustly until actual service provider number portability is available.

- The absence of intraLATA presubscription in most markets forecloses a major portion of the potential competitive revenues.

- Unbundling and interconnection problems remain unsolved by ONA and CI III.

- Massive indirect subsidy flows in all state jurisdictions remain unquantified and unqualified.

- Universal Service Fund and other direct subsidies continue to benefit entrenched providers over competitors.

- Inter-Carrier compensation arrangements remain unsettled and unfair.

2) The Commission Has Never Introduced Deregulation Into Any Telecommunications Market At So Early A Stage

- It took more than ten years after Execunet for AT&T's market share to drop sufficiently (approximately 66%) to merit price cap regulation.

- 1993 competitive access revenues were less than 1% of total LEC access revenues.

- Projecting competitive provider revenues into the future using even a 25% growth rate, the same percentage would not be reached until 2012.

3) The USTA Plan Simply Assumes that Competition Exists -- Contrary to the Plain Facts

- Initial Market Areas ("IMAs") -- The USTA plan starts by putting all wire centers into the IMA category. Existing price cap rules would continue to apply, but using the new price baskets and service band indices proposed by USTA (downward change would be limited to 10% a year, adjusted for price cap index ("PCI") changes).

- Transitional Market Areas ("TMAs") -- IMAs would be reclassified as TMAs when some "evidence" of competition exists due to: "[T]he **existence** of an operational expanded interconnection arrangement within the wire center. It could also be shown by the offering of a substitutable access service by a CAP, IXC, cable television operator, cellular or PCS provider, private carrier, microwave carrier or other entity within the geographic are served by the wire center" (USTA Comments at 65; emphasis supplied). Downward changes would be limited to 15% a year, adjusted for PCI changes, and LECs could respond to RFPs with tailored contracts.

- Competitive Market Areas ("CMAs") -- Wire centers where "(1) at least 25 percent of the demand for the local exchange carrier's interstate access services, or 20 percent of the total market demand of interstate access services within that area, have available to them an alternative source of supply, and (2) customers ... representing at least 25 percent of the total demand within the area for the exchange carrier's interstate access services, **or a single customer** whose demand represents at least 15 percent of that total, actively seek to reduce the cost of their access service through the solicitation of bids, use of private networks, or construction of their own facilities" (id.; emphasis supplied). No price cap regulation would apply within CMAs.

4) In Addition to Assuming the Existence of Competition, The USTA Plan Is Easily Manipulated

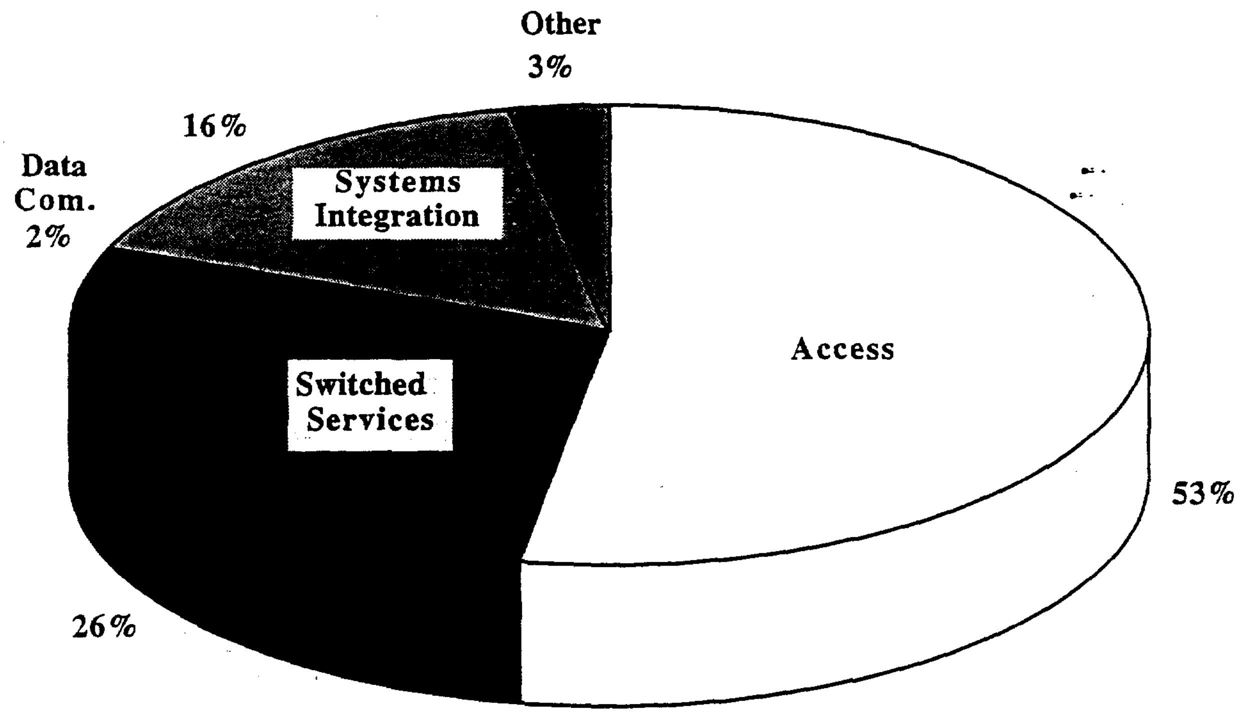
- The criteria proposed by USTA for changing IMAs to TMAs need to be immune from LEC tampering if TMAs are supposed to reflect economic reality. However, USTA's standard for shifting a wire center from a IMA to a TMA -- a single enhanced interconnection order -- could easily be triggered by actions unrelated to the arrival of true competitive presence (such as the installation of private facilities), thereby allowing LECs to game the process.

- Even if the Commission could be assured that all enhanced interconnection orders under USTA's scheme were bona fide, a single order in a wire center is not necessarily evidence of viable competition for a wire center's other access customers. End users with high-value data lines will likely order expanded interconnection at even a high price for service redundancy purposes, but this is entirely irrelevant to whether other access customers in that wire center could afford to make the same choice.

- USTA assumes that anticompetitive prices directed against existing providers of special access is the only threat it needs to accommodate in its proposal. This plainly ignores the obvious gains the LECs would enjoy if they were able to deter future investment in competitive facilities through improper pricing made possible under USTA's proposal.

- USTA never addresses several serious analytic problem which preclude any reliance on its analysis. These include: economies of scope in the LECs' special access facilities; the distortions caused by separations; the continued existence of incentives to predatory pricing at both the state and Federal levels; and continued statutory and regulatory prohibitions limiting full local compensation.

FIG. I-2. 1994 REVENUE DISTRIBUTION



Total 1994 Revenue = $620 M

Source: Connecticut Research

Table II-10. REVENUE GROWTH BY SERVICE CATEGORY

	1993	1994*	Growth
Access	214	328	53%
Switched Services	32	163	409%
Data Communications	2	12	500%
Other Telecom	7	18	157%
Systems Integration	92	99	8%
	347	620	79%

* Connecticut Research end of year projection on 9/94